Mr. Chairman, members of the committee.

Thank you for giving me an opportunity to address you all here today.

My name is Jason Bottomley, I am from district 33, and I am here today to provide some testimony IN OPPOSITION to SB1128.

As far as I can read, there are already statutes within the Friend of the Court Act which effectively cover a requirement of the friend of the court to perform post-judgment reviews of child support and to make recommendations to the court based on their findings, as well as requirements on how a request for review can turn into a petition which sets the date that a modification can be made retroactive to.

The Friend of the Court Act, sections 17 and 17b, both cover these issues.

The thing to remember here is that these statutes pertain to **reviews** and **recommendations** which are made by the friend of the court for **modifications** - not just for **reductions**. As a "customer" of the foc myself, and having had contact with hundreds of other foc "customers" from all across the state, I can attest to the fact that it's a commonly held practice that is witnessed by *both* parents that requests for reductions in support are typically **denied** - no matter what the laws say. However, requests for reviews where an increase may be possible are always met with approval.

Coming from this perspective, it might be hard for some to understand why someone like myself would testify against a bill which would seemingly remove the same issues that our armed services personnel are facing in dealing with the friend of the court. However, after taking an objective look at what is being proposed in this bill - I have found it to be FLAWED.

Here's why:

In the first paragraph, the bill proposes adjusting support amounts in proportion with any increase or reduction in military pay as compared to civilian pay. Reducing support by a fraction proportionate to this gained or lost pay would not be in accordance with the Michigan Child Support Formula. The formula determines support amounts by using a matrix and applying the **actual** income of BOTH parents.

When this formula is used to calculate support, any increase or decrease in the income of either parent would not have a proportionate effect on the amount of support due. But it would according to the language in SB1128.

Usage of the Michigan Child Support Formula is mandated by Section 5 of the Friend of the Court Act; and this legislative mandate stems from the federal Child Support Enforcement Amendments of 1984. Therefore SB1128 would effectively bypass the usage of this formula, ignoring both federal and state legislation. These laws mandate that friend of the court use the formula when making recommendations to the court for child support amounts, and that any deviations be made in a WRITTTEN REPORT TO THE JUDGE and contain reasons for the deviation.

This leads me to a second issue:

This bill also proposes that, upon objection to the proposed adjustment, one possible option for the friend of the court is to schedule a hearing in front of a judge **"or referee"** to determine whether the adjustment should be either modified or set aside.

This doesn't account for three things:

First: It does not provide for making a determination that the adjustment being objected to is CORRECT. If the determination of leaving the proposed adjustment as-is if it is determined to be correct is **not** included in the language, then it will leave an opening for interpretation that the adjustment must be either modified or set aside - and nothing else.

Next: Under Michigan Court Rule 3.215(E)(4), objections to a referee recommended order are heard de-novo by **a judge - not by a referee** (and especially not by the referee who initially made the recommendation...). Since, in practice, most (if not all) child support adjustments are made by referees, this particular language in this bill could effectively bring the objection back to the same referee for a final determination.

Which leads to the final issue of the three: Domestic relations matters concerning custody, parenting time, and child support are JUDICIAL MATTERS - and therefore must be left for a Judge's decision. Referee's are not judges, and therefore cannot adjudicate matters - they can only make written recommendations to a Judge. By allowing referees to make binding determinations as to whether support "...adjustment(s) should be modified or set aside" as the current language in SB1128 proposes, we would be effectively giving them authority which exceeds that of what is originally prescribed in the Friend of the Court Act and again going against what has already been legislated.

In closing, from my viewpoint as a voting citizen in this state, the only thing that this bill would accomplish is that it would provide better access to friend of the court services which are already codified in the Friend of the Court Act to only a specified group of citizens.

With all due respect to our men and women in uniform, the question needs to be raised: Why are we attempting to legislate something that is already legislated in another Act - and more importantly, why ISN'T the focus here on why EVERYONE is receiving lackluster service from the friend of the court... ESPECIALLY THOSE WHO FIGHT AND DIE FOR OUR COUNTRY?

Thank you.

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FRIEND OF THE COURT ACT (EXCERPT)
Act 294 of 1982

552.517 Review of child support order after final judgment; notices and conduct of review; modification order; certain determinations requiring report; contents of report; petition for modification; scheduling of hearing; objection to determination of no change in order; petition to require dependent health care coverage; costs.

Sec. 17. (1) After a final judgment containing a child support order has been entered in a friend of the court case, the office shall periodically review the order, as follows:

(a) If a child is being supported in whole or in part by public assistance, not less than once each 36 months unless both of the following apply:

(*i*) The office receives notice from the department that good cause exists not to proceed with support action.

(*ii*) Neither party has requested a review.

(b) At the initiative of the office, if there are reasonable grounds to believe that the amount of child support awarded in the judgment should be modified or that dependent health care coverage is available and the support order should be modified to include an order for health care coverage. Reasonable grounds to review an order under this subdivision include temporary or permanent changes in the physical custody of a child that the court has not ordered, increased or decreased need of the child, probable access by an employed parent to dependent health care coverage, or changed financial conditions of a recipient of support or a payer including, but not limited to, application for or receipt of public assistance, unemployment compensation, or worker's compensation; or incarceration or release from incarceration after a criminal conviction and sentencing to a term of more than 1 year. Within 14 days after receiving information that a recipient of support or payer is incarcerated or released from incarceration as described in this subsection, the office shall initiate a review of the order. A review initiated by the office under this subdivision does not preclude the recipient of support or payer from requesting a review under subdivision (d).

(c) At the direction of the court.

(d) Upon receipt of a written request from either party. Within 14 days after receipt of the review request, the office shall determine whether the order is due for review. The office is not required to investigate more than 1 request received from a party each 36 months.

(e) If a child is receiving medical assistance, not less than once each 36 months unless either of the following applies:

(*i*) The order requires provision of health care coverage for the child and neither party has requested a review.

(*ii*) The office receives notice from the family independence agency that good cause exists not to proceed with support action and neither party has requested a review.

(f) If requested by the initiating state for a recipient of services in that state under title IV-D, not less than once each 36 months. Within 14 days after receipt of a review request, the office shall determine whether an order is due for review.

(2) Within 180 days after determining that a review is required under subsection (1), the office shall send notices as provided in section 17b, conduct a review, and obtain a modification of the order if appropriate.

(3) The office shall use the child support formula developed by the bureau under section 19 in calculating the child support award.

(4) The office shall petition the court if modification is determined to be necessary unless either of the following applies:

(a) The difference between the existing and projected child support award is within the minimum threshold for modification of a child support amount as established by the formula.

(b) The court previously determined that application of the formula was unjust or inappropriate and the office determines that the facts of the case and the reasons and amount of the prior deviation remain unchanged.

(5) The notice under section 17b(3) constitutes a petition for modification of the support order and shall be filed with the court.

(6) If the office determines there should be no change in the order and a party objects to the determination in writing to the office within 21 days after the date of the notice provided for in section 17b(3), the office shall schedule a hearing before the court.

(7) If a support order lacks provisions for health care coverage, the office shall petition the court for a modification to require that 1 or both parents obtain or maintain health care coverage for the benefit of each child who is subject to the support order if either of the following is true:

(a) Either parent has health care coverage available, as a benefit of employment, for the benefit of the child at a reasonable cost.

(b) Either parent is self-employed, maintains health care coverage for himself or herself, and can obtain health care coverage for the benefit of the child at a reasonable cost.

(8) The office shall determine the costs to each parent for dependent health care coverage and child care costs and shall disclose those costs in the recommendation under section 17b(3).

History: 1982, Act 294, Eff. July 1, 1983;—Am. 1994, Act 37, Imd. Eff. Mar. 7, 1994;—Am. 2002, Act 571, Eff. June 1, 2003;—Am. 2004, Act 207, Eff. June 30, 2005.

Popular name: Friend of the Court

FRIEND OF THE COURT ACT (EXCERPT)
Act 294 of 1982

552.517b Review of order; notice of right to request; notice of review; calculation of support amount; objection; joint meeting expediting resolution of support issues; recommendation; modification; frequency of review.

Sec. 17b. (1) Child support orders entered after the effective date of the 2004 amendatory act that added subsection (8) shall be modified according to this section. For each support order entered before the effective date of the 2004 amendatory act that added subsection (8), the friend of the court office shall provide notice to the parties of their right to a review under this section as required by federal law. Notices under this subsection may be placed in court orders as allowed by federal law.

(2) The friend of the court office shall initiate proceedings to review support by sending a notice to the parties. The notice shall request information sufficient to allow the friend of the court to review support, state the date the information is due, and advise the parties concerning how the review will be conducted.

(3) After the information in subsection (2) is due, but not sooner than 21 days or later than 120 days after the date the notice is sent, the friend of the court office shall calculate the support amount in accordance with the child support formula and send a notice to each party and his or her attorney, which shall include all of the following:

(a) The amount calculated for support.

(b) The proposed effective date of the support amount.

(c) Substantially the following statement: "Either party may object to the recommended support amount. If no objection is filed within 21 days of the date this notice was mailed, an order will be submitted to the court incorporating the new support amount." The notice also shall inform the parties of how and where to file an objection.

(4) Twenty-one or more days from the date the notice required by subsection (3) is sent, the friend of the court office shall determine if an objection has been filed. If an objection has been filed, the friend of the court shall set the matter for a hearing before a judge or referee or, if the office receives additional information with the objection, it may recalculate the support amount and send out a revised notice in accordance with subsection (3). If no objection is filed, the friend of the court office shall prepare an order which the court shall enter if it approves of the order.

(5) The friend of the court may schedule a joint meeting between the parties to attempt to expedite resolution of support issues in accordance with the guidelines set forth in section 19(3)(m). The joint meeting and proceedings following the joint meeting are subject to the requirements of section 42a of the support and parenting time enforcement act, MCL 552.642a.

(6) The following provisions apply to support review proceedings under this section:

(a) A recommendation under subsection (3) shall state the calculations upon which the support amount is based. If the friend of the court office recommends a support amount based on imputed income, the recommendation shall also state the amount that would have been recommended based on the actual income of the parties if the actual income of the parties is known. If income is imputed, the recommendation shall recite all factual assumptions upon which the imputed income is based.

(b) The friend of the court office may impute income to a party who fails or refuses to provide information requested under subsection (2).

(c) At a hearing based on an objection to a friend of the court office recommendation, the trier of fact may consider the friend of the court office's recommendation as evidence to prove a fact relevant to the support calculation when no other evidence is presented concerning that fact, if the parties agree or no objection is made to its use for that purpose.

(7) The court shall not require proof of a substantial change in circumstances to modify a child support order when support is adjusted under section 17(1).

(8) A party may also file a motion to modify support. Upon motion of a party, the court may only modify a child support order upon finding a substantial change in circumstances, including, but not limited to, health care coverage becoming newly available to a party and a change in the support level under section 17(4)(a).

(9) Notwithstanding any other provisions of this section, the friend of the court office shall conduct a more frequent review of the support order upon presentation by a party of evidence of a substantial change in circumstances as set forth in the child support formula guidelines.

History: Add. 1994, Act 37, Imd. Eff. Mar. 7, 1994;—Am. 2002, Act 571, Eff. June 1, 2003;—Am. 2004, Act 207, Eff. June 30, 2005.

Popular name: Friend of the Court

CHAPTER 3 SPECIAL PROCEEDINGS AND ACTIONS
Chapter Last Updated 7/6/2006

Rule 3.215 Domestic Relations Referees

...

(E) Posthearing Procedures.

...

(4) A party may obtain a judicial hearing on any matter that has been the subject of a referee hearing and that resulted in a statement of findings and a recommended order by filing a written objection and notice of hearing within 21 days after the referee's recommendation for an order is served on the attorneys for the parties, or the parties if they are not represented by counsel. The objection must include a clear and concise statement of the specific findings or application of law to which an objection is made. Objections regarding the accuracy or completeness of the recommendation must state with specificity the inaccuracy or omission.

...

TATE PLAN FOR CHILD AND SPOUSAL SUPPORT

SEC. 454. *[42 U.S.C. 654]* **A State plan for child and spousal support must**—

(1) provide that it shall be in effect in all political subdivisions of the State;
(2) provide for financial participation by the State;
(3) provide for the establishment or designation of a single and separate organizational unit, which meets such staffing and organizational requirements as the Secretary may by regulation prescribe, within the State to administer the plan;
(4) **provide that the State will**—
(A) **provide services relating to the establishment of paternity or *the establishment, modification, or enforcement of child support obligations*, as appropriate, under the plan with respect to**—
(i) each child for whom (I) assistance is provided under the State program funded under part A of this title, (II) benefits or services for foster care maintenance are provided under the State program funded under part E of this title, (III) medical assistance is provided under the State plan approved under title XIX, or (IV) cooperation is required pursuant to section 6(l)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2015(l)(1))[97], unless, in accordance with paragraph (29), good cause or other exceptions exist;
(ii) **any other child, if an individual *applies for such services* with respect to the child**; and ...

...(excerpted from http://www.ssa.gov/OP_Home/ssact/title04/0454.htm, ***emphasis added for effect***)...

FRIEND OF THE COURT ACT (EXCERPT)
Act 294 of 1982

552.505a Open friend of the court case; closure.

Sec. 5a. (1) Except as required by this section, an office of the friend of the court shall open and maintain a friend of the court case for a domestic relations matter. If there is an open friend of the court case for a domestic relations matter, the office of the friend of the court shall administer and enforce the obligations of the parties to the friend of the court case as provided in this act. If there is not an open friend of the court case for a domestic relations matter, the office of the friend of the court shall not administer or enforce an obligation of a party to the domestic relations matter.

(2) The parties to a domestic relations matter are not required to have a friend of the court case opened or maintained for their domestic relations matter. With their initial pleadings, the parties to a domestic relations matter may file a motion for the court to order the office of the friend of the court not to open a friend of the court case for the domestic relations matter. If the parties to a domestic relations matter file a motion under this subsection, the court shall issue that order unless the court determines 1 or more of the following:

(a) A party to the domestic relations matter is eligible for title IV-D services because of the party's current or past receipt of public assistance.

(b) A party to the domestic relations matter applies for title IV-D services.

(c) A party to the domestic relations matter requests that the office of the friend of the court open and maintain a friend of the court case for the domestic relations matter, even though the party may not be eligible for title IV-D services because the domestic relations matter involves, by way of example and not limitation, only spousal support, child custody, parenting time, or child custody and parenting time.

(d) There exists in the domestic relations matter evidence of domestic violence or uneven bargaining positions and evidence that a party to the domestic relations matter has chosen not to apply for title IV-D services against the best interest of either the party or the party's child.

(e) The parties have not filed with the court a document, signed by each party, that includes a list of the friend of the court services and an acknowledgment that the parties are choosing to do without those services.

(3) If a friend of the court case is not opened for a domestic relations matter, the parties to the domestic relations matter have full responsibility for administration and enforcement of the obligations imposed in the domestic relations matter.

(4) The parties to a friend of the court case may file a motion for the court to order the office of the friend of the court to close their friend of the court case. The court shall issue an order that the office of the friend of the court shall close the friend of the court case unless the court determines 1 or more of the following:

(a) A party to the friend of the court case objects.

(b) A party to the friend of the court case is eligible for title IV-D services because the party is receiving public assistance.

(c) A party to the friend of the court case is eligible for title IV-D services because the party received public assistance and an arrearage is owed to the governmental entity that provided the public assistance.

(d) The friend of the court case record shows that, within the previous 12 months, a child support arrearage or custody or parenting time order violation has occurred in the case.

(e) Within the previous 12 months, a party to the friend of the court case has reopened a friend of the court case.

(f) There exists in the friend of the court case evidence of domestic violence or uneven bargaining positions and evidence that a party to the friend of the court case has chosen to close the case against the best interest of either the party or the party's child.

(g) The parties have not filed with the court a document, signed by each party, that includes a list of the friend of the court services and an acknowledgment that the parties are choosing to do without those services.

(5) The closure of a friend of the court case does not release a party from the party's obligations imposed in the underlying domestic relations matter. The parties to a closed friend of the court case assume full responsibility for administration and enforcement of obligations imposed in the underlying domestic relations matter.

(6) If a party to the underlying domestic relations matter wants to ensure that child support payments made after a friend of the court case is closed will be taken into account in any possible future office of the friend of the court enforcement action, the child support payments must be made through the SDU. If the parties choose to continue to have child support payments made through the SDU, the office of the friend of the court shall not close its friend of the court case until each party provides the SDU with the information necessary to process the child support payments required in the underlying domestic relations matter.

(7) If a party to a domestic relations matter for which there is not an open friend of the court case applies for services from the office of the friend of the court or applies for public assistance, the office of the friend of the court shall open or reopen a friend of the court case. If the office of the friend of the court opens or reopens a friend of the court case as required by this subsection, the court shall issue an order in that domestic relations matter that contains the provisions required by this act and by the support and parenting time enforcement act for a friend of the court case.

(8) If the parties to a domestic relations matter file a motion under subsection (2) or (4), the friend of the court shall advise the parties in writing as to the services that the office of the friend of the court is not required to provide. The state court administrative office shall develop and make available a form for use by an office of the friend of the court under this subsection and a document for use by parties to a domestic relations matter under subsection (2) or (4).

History: Add. 2002, Act 571, Eff. Dec. 1, 2002.

Popular name: Friend of the Court